

'BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of     }  
JAMES M. DENNY                         }

For Appellant:     James M. Denny, in pro. per.

For Respondent:    Burl D. Lack, Chief Counsel;  
                    Wilbur F. Lavelle, Assistant Counsel

O P I N I O N

This appeal is made pursuant to Section 18594 of' the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of James M. Denny to a proposed assessment of additional personal income tax in the amount of \$42.30 for the year 1956.

Appellant is an automobile salesman. In his return for 1956 he claimed a deduction for "bends and bird dog fees" in the amount of \$2,131.09. This represented sums allegedly paid to others for sending prospective customers to him and for such items as automobile accessories, white sidewall tires, radios, and heaters which Appellant claims to have purchase; as inducements to customers to buy automobiles. Respondent disallowed all but \$1,502.10 of the amount claimed, on the ground that the remainder was not substantiated.

Appellant also claimed a deduction of \$1,842.96 for automobile expense including depreciation on a "demonstrator" which Appellant had purchased for \$2,833.12. Appellant claimed a deduction of the difference between the cost of the automobile and its "book value" at the end of the year. Respondent adjusted Appellant's depreciation allowance and based it upon cost amortized over a useful life of four years. Consequently, \$327.72 of the amount claimed as depreciation by Appellant was disallowed.

Appellant has submitted no facts or argument with respect to the depreciation claimed by him but does assert that all of the amounts which he claimed for "bends and bird dog fees" were actually paid by him.

Respondent concedes that to the extent they were substantiated, the expenses for "bends and bird dog fees" were deductible, presumably under Section 17202 of the Revenue and Taxation Code as ordinary and necessary expenses paid or incurred in carrying on a trade or business.

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It must be pointed out initially that all deductions are a matter of legislative grace. (New Colonial Ice Co. v. Helvering, 292 U.S. 435.) In order to avail himself of deductions **allowed** by law, Appellant must furnish reasonable proof of the expenditures which gave rise to the deductions. Appellant has placed in evidence cancelled checks and invoices for the year in question but has failed to substantiate that he spent more than \$1,502.10 for items classified in his **return as "bends and bird dog fees."** For **example**, some of the checks bear no indication that they were ever paid by the bank on which they were drawn. Also, there is no indication on some of the invoices that they have been **paid**. We hold that Respondent's action in disallowing the balance claimed by Appellant was proper.

Since Appellant failed to address himself specifically to the matter of depreciation we must assume that he has acquiesced in **Respondent's** action in recomputing the amount to be allowed in that respect.

O R D E R

Pursuant to the views expressed in the Opinion of the Board **on** file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to Section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of James M. Denny to a proposed assessment of additional personal income tax in the amount of \$42.30 for the year 1956 be and the same is hereby sustained.

Done at Sacramento, California, this 17th day of May, 1962,  
by the State Board of Equalization.

Geo. R. Reilly, Chairman  
John W. Lynch, Member  
Paul R. Leake, Member  
Richard Nevins, Member  
                    , Member

ATTEST: Dixwell L. Pierce, Secretary